

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1011 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESH DAYARAM JESWAMI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR SJ DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/10/1999

ORAL JUDGEMENT

1. Heard the learned advocate Ms. Suman Pahwa for the petitioner and learned AGP Mr. S.J.Dave for respondent nos. 1, 2 and 3. The detention order dated 23.12.98 passed by respondent no. 2 - Commissioner of Police, Ahmedabad against the petitioner in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (PASA for short) is challenged in the present petition under

Article 226 of the Constitution of India.

2. The grounds of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : B inter alia indicate that the criminal case bearing CR No. 556/98 was registered against the present petitioner on 22.12.98 at Prohibition Police Station (East) and 455 bottles of foreign made liquor were seized. The offences under the Bombay Prohibition Act were registered and the matter is pending for investigation. The grounds further indicate that three witnesses on assurance of anonymity have supplied information regarding the alleged bootlegging activity of the petitioner vide their statements dated 22.12.98. On the basis of the said material, the detaining authority came to a conclusion that the petitioner is a "bootlegger" within the meaning of section 2(b) of PASA. That resort to general provisions of law is not likely to prevent the petitioner from continuing his anti-social activity and as such, the impugned order is passed.

3. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner that the petitioner was arrested in respect to the said CR No. 556/98 on 22.12.98 and the petitioner was in police custody when the impugned order is passed. That the detaining authority has failed to consider the aspect that no bail application has been moved by the petitioner. As such, there is non-application of mind which has vitiated the impugned order. It is also submitted that the detaining authority has failed to consider the aspect of less drastic remedy regarding cancellation of bail even if the bail is granted and thereby also the order is vague. To support the said contention, reliance is placed on the observation made by this Court in the matter reported vide 36 (2) GLR P. 1134. The petitioner has further contended that the representation made on behalf of the petitioner dated 3rd February, 1999 appears to have been received by the detaining authority on 6th February, 1999. However, the petitioner received reply from the State Government on 18th February, 1999. That the said representation has been rejected. That there is no explanation regarding delay in considering the representation of the petitioner whereby the fundamental right of the petitioner guaranteed under Article 22 (5) of the Constitution of India has been violated and the impugned order is rendered invalid.

4. The detaining authority - respondent no.2 has filed affidavit-in-reply dated 31st July, 1999 to which

affidavit-in-rejoinder has been filed on 4th October, 1999. However, no affidavit on behalf of respondent no.1 has been filed. Learned AGP Mr. S.J. Dave relying on the statement made by the deponent in the affidavit dated 31st July, 1999 attempted to salvage the issue by submitting that the representation dated 3rd February, 1999 of the petitioner was received on 9th February, 1999 and was sent to the State Government on 11th February, 1999. However, Mr. Dave could not explain the delay after 11th February, 1999 till 18th February, 1999 when the representation appears to have been rejected as stated in the communication served to the detinue and produced on record vide Page : N. In the absence of any affidavit-in-reply on behalf of the responsible officer of respondent no.1 - the State, the time lag between 6th February, 1999 to 18th February, 1999 in considering the representation made by the petitioner has to be construed as inordinate delay in violation of constitutional imperative under Article 22(5) of the Constitution of India and consequently, the impugned order is rendered invalid.

5. As the petition succeeds on the above-stated point alone, it is not necessary to consider and decide the other contentions raised by the petitioner.

6. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 23.12.98 passed by respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner Kamlesh Dayaram Jeswani (Sindhi) is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

pirzada/-